CURRITUCK COUNTY
NORTH CAROLINA
July 19, 2010

The Board of Commissioners met on Tuesday, July 19, 2010, at 7:00 p.m. for its regularly scheduled meeting at the Historic Courthouse in the Commissioners Meeting Room with the following members present: Chairman O'Neal, Commissioners Etheridge, Aydlett, Gregory, Nelms, Rorer and Taylor.

## Invocation Pledge of Allegiance

Mr. Bob Henley, was present to give the invocation.

## Approval of Agenda

Commissioner Etheridge moved to add a budget amendment to the Consent Agenda. Commissioner Gregory seconded the motion. Motion carried.

Item 2 Public Comment

***Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.***

Item 3 **Consideration and Action:** PB 10-19 OBX Monster Bus & Limo Service: Request for a special use permit for an outdoor tour operator located at 795 Sunset Blvd., Tax Map 116D, Parcel 6A, Poplar Branch Township.

Item 4 **Public Hearing and Action:** An Ordinance of the Currituck County Board of Commissioners imposing a moratorium on the acceptance, processing or consideration of applications for outdoor tour operators pursuant to N.C. Gen. Stat. Section 153A-340(h).

Item 5 **Consent Agenda:**

1. Charge Levy on Motor Vehicles for March, Assessment $18,520,882 Tax Amount $59,279.78
2. Budget Amendment for Recreation Department

Item 6 Commissioner's Report

Item 7 County Manager's Report

Item 8 **Closed Session:**

1. According to GS 143-318.11(3) to consult with an attorney in order to preserve the attorney-client privilege

Adjourn

## Public Comment

***Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.***

Chairman O'Neal moved to open the public comment period. There being no comments, he closed the public comment period.

**Consideration and Action: PB 10-19 OBX Monster Bus & Limo Service: Request for a special use permit for an outdoor tour operator located at 795 Sunset Blvd., Tax Map 116D, Parcel 6A, Poplar Branch Township.**

Sworn testimony was given prior to making statements.

Chairman O'Neal opened the evidence phase of the hearing.

Ben Woody, Planning Director, reviewed the application.

**CASE ANALYSIS FOR THE**
**BOARD OF COMMISSIONERS**
**DATE: July 19, 2010**
**PB 10-19 OBX Monster Bus & Limo**

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**ITEM:** PB 10-19 OBX Monster Bus & Limo - Special Use Permit for Outdoor Tour Operator

**LOCATION:** 795 Sunset Blvd. Suite D, Corolla, NC

**TAX ID:** 116D-000-006A-0000

**ZONING DISTRICT:** General Business (GB)

**PRESENT USE:** Office

**OWNER:** Karichelle Realty
795 Sunset Blvd. Suite A
Corolla, NC 27927

**APPLICANT:** Jennifer Marshall
111 Evans Street
Grandy, NC 27939

**LAND USE/ZONING OF SURROUNDING PROPERTY:**

| | **Land Use** | **Zoning** |
|---|---|---|
| **NORTH:** | Natural State | RO1 |
| **SOUTH** | Commercial | GB |
| **EAST:** | Commercial | GB |
| **WEST:** | Commercial | GB |

**LAND USE PLAN CLASSIFICATION:** The 2006 Land Use Plan classifies the site as Full Service within the Corolla subarea.

**SIZE OF SITE:** .12 acres

**NUMBER OF UNITS:** N/A

**PROJECT DENSITY:** N/A

**UTILITIES:** Southern Outer Banks Water System & Monteray Shores Wastewater Treatment Plant

**PUD ALLOCATION:** Buck Island PUD Land Area: 70.8 acres, Open Space: 27.23 acres, Commercial Allocation: 8.66 acres

**I. NARRATIVE OF REQUEST:**

1. The applicant is seeking a Special Use Permit for the operation of Horse Tours from one 26-passenger vehicle as well as the use of the same vehicle as a limousine/shuttle bus.
2. The applicant will operate from the office located at 795 Sunset Blvd in TimBuck II Shopping Center; the bus will be parked at the Harbinger Center at 8845 Caratoke Highway.
3. Loading and unloading of passengers will occur at rental homes and/or hotels and not from the property at TimBuck II Shopping Center.
4. The Special Use Permit application pertains to the property located at 795 Sunset Boulevard. Associated activities that may occur off-site are subject to the conditions included in the approved Permit.

**II. QUESTION(S) BEFORE THE BOARD:**

**Special Use Permit Criteria and Staff Findings:**

Special use permits (SUP) are intended to allow the Board of Commissioners flexibility in the administration of the UDO. Through the SUP procedure, property uses which would otherwise be considered undesirable in certain districts can be developed subject to conditions of approval to minimize any negative effects they might have on surrounding properties.

In order to approve a SUP, certain criteria must be satisfied. The criteria and suggested findings of fact are outlined as follows:

1. Completeness of application.
   **Suggested Findings:**
   a. The application is complete.

2. The proposed use is among those listed in the Table of Permissible Uses as a special use indicated with an "S".
   **Suggested Findings:**
   a. The Board of Commissioners adopted an ordinance on September 21, 2009 that established outdoor tour operators as a specific land use. Subsequently, any business operating as a vehicular tour operator with a base operation within the jurisdiction of Currituck County is required to apply for a new special use permit.

3. The conditions proposed meet or exceed the minimum requirements of this ordinance.
   **Suggested Findings:**
   a. The applicant's proposal will be required to maintain compliance with all UDO requirements and any additional requirements of the Board of Commissioners.
   b. Adequate parking is not available at the TimBuck II Shopping Center; therefore, the applicant cannot load or unload patrons from their business location.

4. The special use will not endanger the public health or safety:
   **Suggested Findings:**
   a. The parcel is located in TimBuck II Shopping Center which is a well-established commercial area.

5. The special use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located
   **Suggested Findings:**
   a. The parcel is located in TimBuck II Shopping Center which is a well-established commercial area.
   b. Since loading and unloading of patrons cannot occur at TimBuck II Shopping Center, the applicant must pick-up patrons at single family dwellings within residential areas. Considering the size of the transport vehicle, this may create compatibility issues within established residential areas.

6. The special use will be in conformity with the Land Use Plan or other officially adopted plan.
   **Suggested Findings:**
   The 2006 Land Use Plan classifies this site as Full Service within the Corolla subarea. Insert LUP classification narrative. The proposed use is in keeping with the policies of the plan, some are as follows:
   a. POLICY ED1: new and expanding industries and businesses should be especially encouraged that: 1) diversify the local economy, 2) train and utilize a more highly skilled labor force, and 3) are compatible with the environmental quality and natural amenity-based economy of Currituck County.
   b. POLICY HP3: Development of the tourism and educational potential of the area's architectural, historic and cultural resources shall be encouraged.

7. The special use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate. Such facilities must be in place or programmed to be in place within two years after the

initial approval of the plan (sketch plan in the case of major subdivisions).

**Suggested Findings:**

a. This application should have no impact on the County's ability to provide public facilities.

**III. TECHNICAL REVIEW COMMITTEE RECOMMENDATION:**

Pursuant to the Unified Development Ordinance, the Technical Review Committee recommends approval subject to the following plan corrections:

**Planning**

1. Provide site plan with adequate parking for one tour bus.

**Albemarle Regional Health Services**

2. Approved as long as business provides customer access to a public restroom facility when needed

**IV. PLANNING STAFF RECOMMENDATION:**

The proposed development appears to not meet the criteria for granting a Special Use Permit for an Outdoor Tour Operator in TimBuck II Shopping Center and therefore staff recommends **denial** until such time as the following items can be corrected or addressed:

- Adequate parking must be provided for employees, patrons and tour vehicles at the office location in TimBuck II Shopping Center.

Should the Board of Commissioners approve this request, staff recommends the following permit conditions:

1. This special use permit shall be valid provided that satellite parking for the tour bus is consistently maintained with staff approval.
2. The tour bus shall not at any time be parked or standing on the property at TimBuck II Shopping Center.
3. Loading and unloading of tour participants shall not occur from the property at TimBuck II Shopping Center, or any other commercial location where patrons are leaving unauthorized personal vehicles.
4. There shall be a maximum of 6 tours per day.
5. All horse tours must be guided from Memorial Day to Labor Day.
6. Tour vehicles shall be labeled with decals or paint markings that clearly display the company name. Label font size shall be a minimum of four inches.
7. Tours shall comply with Chapter 3: Article II. Wild Horses, Chapter 10: Article II. Beaches and all other applicable provisions of the Currituck County Code of Ordinances. Tours shall also operate in accordance with all State and Federal laws.

8. The Board of Commissioners may establish a maximum number of vehicles as part of the special use permit approval process.
9. This special use permit shall be reviewed administratively on an annual basis and a report shall be filed with the Currituck County Board of Commissioners detailing the nature of any complaints received by the Planning Department. At the discretion of the Code Enforcement Officer or Board of Commissioners, the special use permit shall be subject to revocation or modification by the permit issuing authority following a public hearing.

**V. PLANNING BOARD RECOMMENDATION:**
The Planning Board moved to deny PB 10-19 request for a special use permit because it will endanger the public health and will injure the value of abutting property and will not be in harmony with the area in which it is located.

**PLANNING BOARD DISCUSSION (6-8-10)**
Mr. West stated he has some concern with giving a Special Use Permit for someone to operate at TimBuck II and then they cannot load or unload at TimBuck II. A lot of the streets and cul-de-sacs where the rental homes are may not allow for such a large bus to turn around without going on adjacent properties.

Ms. Wilson stated that if renters are in a private community how would the bus get access to pick them up.

Ms. Marshall stated that Currituck Club did allow them to come in and pick up customers.

Mr. Midgette asked Ms. Marshall if she has read all the staff recommendations and if she was in agreement with them.

Ms. Marshall stated yes. Ms. Marshall stated they are trying to establish closer parking. The office space at TimBuck II is for reservations only.

Mr. Wright asked in regards to the UDO that when the taxi service is not in service, vehicles shall be stored in a secure compound, fully enclosed with a fence and gate and the taxi service compound shall be fully screened from adjacent rights-of-way. Does this request meet these requirements?

Mr. Woody stated the Harbinger Center does.

Ms. Wilson asked Ms. Marshall if they have ever encountered a problem with the first customers who are picked up being on the bus too long to the end of the tour.

Ms. Marshall stated that most cases customers are picked up at one house or two houses at the most. Ms. Marshall stated they try to very respectful of people who live in Corolla, mind all traffic laws and try not to block anyone's right of passage.

Ms. Wilson asked if the same routes would be used for the tours as in the past in the four wheel drive area.

Ms. Marshall stated yes.

Ms. Wilson stated that several residents in the Carova beach area who live on dead end streets that have limited turn around have asked that this be addressed. Ms. Wilson suggested the route be altered so the tours not go down dead end streets.

Mr. Wright stated that in the staff recommendations tour bus(s) shall not be parked or standing and loading and unloading cannot be done at TimBuck II. Mr. Wright stated this will take away from the core of the business.

Ms. Taylor stated she has concerns that residential neighborhoods will turn into businesses as the bus comes through.

Mr. Midgette asked Ms. Marshall if she would agree that this case be tabled until a resolution to the parking situation is reached.

Ms. Marshall stated she is working on a resolution and would like to pick up customers at their residents if allowed.

**ACTION**
Mr. Clark moved to ***deny*** PB 10-19 that the special use permit will endanger the public health and will injure the value of abutting property and will not be in harmony with the area in which it is located. Ms. Taylor seconded the motion. Motion carried unanimously.

Commissioner Aydlett stated that the bus and the LLC is in Mr. Clayton's name, not Ms. Marshall's name.

Commissioner Nelms questioned the parking.

Ms. Marshall, applicant, states that she was not aware that Mr. Clayton used the bus for tours over the weekend.

Chairman O'Neal closed the evidence phase of the hearing.

Commissioner Aydlett moved to continue to next meeting when Ms. Marshall could show proof of ownership of the bus and

staff to approve the parking. Commissioner Etheridge seconded the motion. Motion carried with Commissioner Nelms and Taylor voting no.

**Public Hearing and Action: An Ordinance of the Currituck County Board of Commissioners imposing a moratorium on the acceptance, processing or consideration of applications for outdoor tour operators pursuant to N.C. Gen. Stat. Section 153A-340(h).**

Ben Woody, Planning Director, reviewed the ordinance.

**AN ORDINANCE OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS IMPOSING A MORATORIUM ON THE ACCEPTANCE, PROCESSING OR CONSIDERATION OF APPLICATIONS FOR OUTDOOR TOUR OPERATORS PURSUANT TO N.C. GEN. STAT. SECTION 153A-340(h)**

The Board of Commissioners for the County of Currituck, North Carolina, at its regularly scheduled July 19, 2010 meeting, after due advertisement as by law required, conducted a public hearing and heard from the interested public and county officials for the purpose of gathering information and taking appropriate action within the confines of applicable law regarding imposition of a moratorium on the acceptance, processing or consideration of applications for Outdoor Tour Operators that operate in the RO2 Zoning District as a principle component of their business. From the same, the Board of Commissioners makes the following findings of fact, conclusions and legislative determination:

***I.*** **STATEMENT OF THE CONDITION NECESSITATING A MORATORIUM; THE COURSES OF ACTION ALTERNATIVE TO A MORATORIUM CONSIDERED AND THEIR INADEQUACY ~ *NCGS* 153A-340(h)(1)**

A. Pursuant to Policy OB7 of the 2006 Land Use Plan, vehicular access to the off-road area (RO2 Zoning District) shall not compromise the environmental integrity of ecologically sensitive areas or habitat for wild horses.

B. Pursuant to Policy ED1 of the 2006 Land Use Plan, new and expanding industries and businesses should be especially encouraged that are compatible with the environmental quality and natural amenity-based economy of Currituck County.

C. In response to concerns expressed by residents of the off-road area and conflict with the policies of the 2006 Land Use Plan, the Currituck County Planning Department formed a Wild Horse Advisory Group and held a series of meetings in 2009 with outdoor tour operators, off-road area residents, and members of the Corolla Wild Horse Fund. The meetings were convened to discuss the operating procedures of vehicular wild horse tours. The concerns raised at the meetings included: trespassing on private property, speeding along the beach and residential streets, blocked intersections and driveways, degradation of roads, violations of the Wild Horse Ordinance, operation of tours during adverse weather conditions and poor tide patterns, and increasing numbers and frequency of vehicular wild horse tours.

D. The outdoor tour operators agreed to operate during the 2009 season under voluntary compliance with a series of recommendations of the Wild Horse Advisory Group. The recommendations were intended to mitigate the original concerns raised by the advisory group and help determine the true impact of wild horse tours on the off-road area.

E. Following the 2009 season, the Wild Horse Advisory Group and county staff determined that voluntary compliance was not successful and the original concerns were not adequately addressed or mitigated.

F. The Unified Development Ordinance (UDO) was amended on September 21, 2009 to create a formal regulatory structure and allow for outdoor tour operators with the issuance of a special use permit. An outdoor tour operator is defined as a company or individual that arranges travel tours associated with outdoor recreation, including but not limited to, guided or independent horse, bicycle, segway, aviation, boat, or vehicle tours. For the purposes of the definition, the term vehicle includes any self-propelled device or structure used for transporting persons.

G. The amendment to the UDO included an amortization provision that required all vehicular outdoor tour operators with a base operation within the jurisdiction of Currituck County to apply for a special use permit within four months from the passage of the ordinance.

H. The amendment to the UDO standardized the requirements under which an outdoor tour operator can exist and provided a clear permitting and approval process. The amortization period was intended to ensure all outdoor tour operators are treated equitably.

I. Following the amortization period, during the 2010 season, the Currituck County Board of Commissioners approved eight special use permits for outdoor tour operators, totaling 45 tour vehicles with a cumulative capacity of 325 persons.

J. Despite the goals and policies set forth in the 2006 Land Use Plan and special use permit requirements of the UDO, the proliferation and expansion of wild horse tours has continued and the original concerns have not been adequately addressed or mitigated.

K. Potential modification of the regulatory approach for outdoor tour operators and development of a mitigation strategy will be compromised if additional outdoor tour operators are approved prior to the time required to address the concerns set forth herein and the impacts outdoor tours may have on the environmental quality and natural amenity-based economy of Currituck County.

## *II.* STATEMENT OF DEVELOPMENT APPROVAL SUBJECT TO THE MORATORIUM AND HOW SUCH MORATORIUM WILL ADDRESS THE EXISITING PROBLEMS ~ NCGS 153A-340(h)(2)

*Imposition of a moratorium on the acceptance, processing or consideration of applications for Outdoor Tour Operators that operate in the RO2 Zoning District as a principle component of their business will prevent the proliferation and expansion of tour operators. Any additional increase in outdoor tour operators will most certainly exacerbate their impact on the environmental*

*quality and natural amenity-based economy of Currituck County. Said moratorium will provide the county with adequate time to study the concerns set forth herein and determine the most appropriate regulatory approach or mitigation strategy*

***III.*** **DATE FOR TERMINATION AND THE REASONABLE NECESSITY FOR ITS LENGTH TO ADDRESS THE PROBLEMS GIVING RISE TO THE IMPOSITION OF A MORATORIUM ~ NCGS 153A-340(h)(3)**

*Regulation to limit Outdoor Tour Operators or devise a mitigation strategy will require amendment of the Unified Development Ordinance and/or County Code of Ordinances. Therefore, time is required to review existing ordinances, study the impact of vehicular tours on the environs of the off-road area (during the summer season), draft proposed amendments or develop mitigation strategies, and process any proposed amendment or policy changes through relevant county boards or agencies. It is anticipated that a minimum of one year will be required to complete that process.*

***IV.*** **STATEMENT OF ACTIONS AND SCHEDULE FOR THOSE ACTIONS PROPOSED TO BE TAKEN DURING THE EXISTENCE OF A MORATORIUM REASONABLY NECESSARY TO ADDRESS THE PROBLEMS AND CONDITIONS LEADING TO THE IMPOSITION OF THE MORATORIUM ~ NCGS 153A-340(h)(4)**

*During the existence of this moratorium the appropriate Currituck County staff shall:*

A. *Review the Outdoor Tour Operator concept and existing Unified Development Ordinance language to determine amendment to the Unified Development Ordinance and/or County Code of Ordinances that is advisable to limit outdoor tour operators and/or to modify their use through a mitigation strategy. Any actions taken shall meet and preserve the stated goals established by the Currituck County 2006 Land Use Plan; and*
B. *Process any land use ordinance amendments through the Currituck County Planning Board so that a public hearing may be held on any amendments prior to the expiration of this ordinance.*

**IV. IMPOSITION OF MORATORIUM**

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF CURRITUCK that after careful, deliberate and studied contemplation of the above does hereby implement and impose, effective from the date and time of the adoption of this ordinance, to and including the end of July 19, 2011, a moratorium prohibiting the acceptance, processing or consideration by any appointed or elected board an application for Outdoor Tour Operators that operate in the RO2 Zoning District as a principle component of their business.

Chairman O'Neal opened the public hearing. There being no comments, he closed the public hearing.

Commissioner Rorer moved to allow staff the additional time to review and bring recommendations back to the Board for recommendations. Commissioner Gregory seconded the motion. Motion carried.

**Consent Agenda:**

1. Charge Levy on Motor Vehicles for March, Assessment $18,520,882 Tax Amount $59,279.78
2. Budget Amendment for Recreation Department.

Commissioner Taylor moved to approve. Commissioner Nelms seconded the motion. Motion carried.

| Account Number | Account Description | Debit<br>Decrease Revenue or Increase Expense | Credit<br>Increase Revenue or Decrease Expense |
|---|---|---|---|
| 10795-590000 | Capital Outlay | $ 12,250 | |
| 10390-499900 | Appropriated Fund Balance | | $ 12,250 |
| | | $ 12,250 | $ 12,250 |

**Explanation:** Recreation (10795) - Increase appropriations to replace lawn mower purchased in 2001 that is now inoperable and replacement is needed to maintain recreation facilities for the remainder of this season.

**Net Budget Effect:** Operating Fund (10) - Increased by $12,250.

**Commissioner's Report**

Commissioner Nelms stated that the Albemarle Commission through the Work Force Development will be providing seminars for local businesses in the county. He also extended sympathy to Don Austin's family.

Commissioner Rorer commented on the programs at the 4-H Center.

**County Manager's Report**

Dan Scanlon, County Manager, reviewed the storm water project at the Cooperative Extension Center.

**Closed Session:**

a. According to GS 143-318.11(3) to consult with an attorney in order to preserve the attorney-client privilege

Chairman O'Neal moved to go into closed session as stated above. Commissioner Etheridge seconded the motion. Motion carried.

**Adjourn**

After reconvening from closed session, no action was taken.

There being no further business, the meeting adjourned.